

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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THERESE M. BURTON,

Plaintiff-Appellant,

v

WILLIAM CURTIS BURTON,

Defendant-Appellee.

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UNPUBLISHED

February 5, 1999

No. 208104

Genesee Circuit Court

LC No. 95-180356 DM

Before: O'Connell, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiff seeks review of a circuit court order denying her motion to set aside the administrative dismissal of her suit for divorce and to accept jurisdiction to decide the case.

The parties in this matter were married on April 25, 1987. Both were residents of Michigan at the time. Their child was born on March 25, 1995 in Virginia, where the couple had been living since October 1992 because defendant was stationed there as a member of the United States Air Force. The child lived in Virginia with his parents until July 13, 1995, when plaintiff left defendant and returned to Michigan, bringing the minor child with her.

On August 3, 1995, defendant filed for divorce and child custody in Virginia. Plaintiff was personally served. On August 15, 1995, plaintiff filed for divorce and child custody in Michigan. However, no proof of service was filed and defendant maintains that he was never served. Nonetheless, his Michigan attorney filed an appearance on defendant's behalf in the circuit court on September 11, 1995. On September 18, 1995, the Virginia court entered an order pendente lite, nunc pro tunc as of September 13, 1995, granting defendant, among other things, temporary custody of the minor child.

On November 17, 1995, the Genesee Circuit Court Clerk administratively dismissed plaintiff's divorce suit because no proof of service on defendant had been filed. Notice of dismissal was provided to both parties. Six months later, plaintiff filed a petition to reinstate the case. While resolution of her petition was pending, both parties continued to file motions relative to the issues presented in the case as if the case was still "alive." On September 11, 1996, the court entered a scheduling order, stating that

an evidentiary hearing was scheduled for October 3, 1996, at which time the court would consider issues of domicile and jurisdiction. However, the hearing never took place. On March 31, 1997, the court heard arguments regarding the November 17, 1995, order of dismissal. At that hearing, the court announced, "I'll tell you right now, it's very likely that I'm going to approve an order reinstating this because everything that took place subsequent to then was on the assumption that the case was alive." Despite the court's prediction, the case was never reinstated.

In the meantime, on May 15, 1997, the Virginia court entered a divorce a mensa et thoro, granting defendant continued temporary legal and physical custody of the parties' minor child. Although plaintiff had been informed of all the proceedings in Virginia, she had neither answered nor appeared. On June 6, 1997, the Genesee Circuit Court issued an ex parte order granting plaintiff temporary custody of the parties' minor son. This order was set aside on July 17, 1997, on the ground that a final divorce decree had been entered by the Virginia court. On October 3, 1997, plaintiff filed a motion to reinstate or set aside the November 17, 1995, administrative order of dismissal. On November 14, 1997, the trial court entered an order denying plaintiff's motion.

Plaintiff now seeks appeal by right from the trial court's November 14, 1997, refusal to reinstate the action which was dismissed by final order on November 17, 1995. We conclude that this matter is not properly before this Court because plaintiff failed to file the claim within 21 days of the November 17, 1995, final order as required by MCR 7.204(A)(1)(a), and because the subsequent order of November 14, 1997, was not a "postjudgment order affecting the custody of a minor," see MCR 7.203(A)(3).

Although the issue is not properly before us, we note with approval the trial court's recognition that Michigan courts were deprived of jurisdiction by the Uniform Child Custody Jurisdiction Act (UCCJA), MCL 600.651 *et seq.*; MSA 27A.651 *et seq.*, and the federal Parental Kidnapping Prevention Act, 28 USC 1738A. See *In re Clausen*, 442 Mich 648, 656, 670; 502 NW2d 649 (1993).

The claim of appeal is dismissed for lack of jurisdiction. MCR 7.216(A)(10).

/s/ Peter D. O'Connell  
/s/ Michael J. Talbot

I concur in result only.

/s/ Roman S. Gribbs